

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

LaVERN I. MEDEARIS and RUSSELL L.
MEDEARIS, on behalf of themselves and all
others similarly situated,

CV 07-723-PK

Plaintiffs,

OPINION AND ORDER

v.

OREGON TEAMSTER EMPLOYERS
TRUST, THE WILLIAM C. EARHART
COMPANY, INC., an Oregon Corporation,
and DOES-I-X

Defendant.

REDDEN, Judge:

On December 13, 2007, Magistrate Judge Papak issued his Findings and
Recommendation (doc. 23) that Defendants' motion for summary judgment (doc. 9) be
GRANTED as to claims one, three, four, five, six, seven, eight, nine, and ten, but DENIED as to

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claims two, eleven, and twelve.

The matter is now before this court pursuant to 28 U.S.C. § 636(b)(1)(B) and Rule 72(b) of the Federal Rules of Civil Procedure. The district court is not bound by the recommendations of the magistrate judge and "may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions." 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). When a party timely objects to any portion of the magistrate judge's Findings and Recommendation, the district court must conduct a de novo review of the portions of the Findings and Recommendation to which objections are made. 28 U.S.C. § 636(b)(1)(C); McDonnell Douglas Corp. v. Commodore Business Machines, 656 F.2d 1309, 1313 (9th Cir. 1981), cert. denied, 455 U.S. 920 (1982). The district court is not, however, required to review the factual and legal conclusions of the magistrate judge, to which the parties do not object. Thomas v. Arn, 474 U.S. 140, 149 (1985); United States v. Reyna-Tapia, 328 F.3d 1114, 1121 (9th Cir. 2003).

Defendants timely filed objections to Magistrate Judge Papak's Findings and Recommendation that their motion for summary judgment be denied as moot with respect to claims eleven and twelve. I have, therefore, given those portions of the Findings and Recommendation a de novo review. I agree with Magistrate Judge Papak's analysis and conclusions. Neither of Defendants' objections to the Findings and Recommendation were raised in their motion for summary judgment. As such, Defendants waived those arguments. See Greenhow v. Sec'y of Health and Human Servs., 863 F.2d 633, 638-39 (9th Cir. 1988) ("[A]llowing parties to litigate fully their case before the magistrate and, if unsuccessful, to change their strategy and present a different theory to the district court would frustrate the

purpose of the Magistrates Act."), overruled on other grounds by United States v. Hardesty, 977 F.2d 1347 (9th Cir. 1992). If Defendants seek a ruling on the merits of Plaintiffs' eleventh and twelfth claims, they should file a supplemental motion for summary judgment, as Judge Papak gave them leave to do.

Having reviewed the portions of Magistrate Judge Papak's Findings and Recommendation to which the parties object de novo, I find no error. I agree with Magistrate Judge Papak's reasoning and conclusions. Accordingly, I ADOPT Magistrate Judge Papak's Findings and Recommendation as my own opinion.

IT IS SO ORDERED.

DATED this 1st day of February, 2008.

/s/ James A. Redden
James A. Redden
Senior United States District Judge